CF0000061568

Cr. # 1341/97

(2)

XII-188/(Jail)
O.P.R.—5,000-9-81

APPEAL OF PRISONER

Division Bench (Criminal)

No. 41 Name [illegible]

Father's name [illegible]

Residence सोनवर्षा थाना कुसमी Age 35 वर्ष

Sentenced to आजीवन on जिला एवं सत्र न्यायाधीश

Under section 302 IPC by अतिरिक्त

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 5-5-97

3 Date on which Appeal sent 6.5.97

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 41 Name [illegible]

Continued in 5-5-97 Jail Ambikapur

No. 1305 dated 6.5.97 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

सेवा में उपर्युक्त न्यायालय

Superintendent-Central Jail / Sub-Jail

अधीक्षक

मध्य जेल अम्बिकापुर (सरगुजा)

Date of receipt in C. J. M.'S Office 17-6-97

Date of receipt of record to accompany Memo of Appeal of the Appeliate Court. 17-6-97 High Court of M.P. Jabalpur

No. [illegible] Dated 17-6-198 97

Forwarded to the ~~High Court of M.P. Jabalpur~~

C.J.Magistrate

मुख्य न्यायिक मजिस्ट्रेट

अम्बिकापुर, जिला सरगुजा (म०प्र०)

Date of receipt in Appliate Court

(P.T.O.)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.A. 134/97 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

2-2-2006

Miss Sangeeta Mishra, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned the legality of the judgment of conviction and order of sentence dated 5-5-1997 passed by the Sessions Judge, Ambikapur, in Sessions Trial No.94/96, whereby learned Sessions Judge after holding the accused/appellant guilty under Section 302 of the I.P.C. for committing the murder of his wife Padi, sentenced him to undergo imprisonment for life.

Case of the prosecution is that accused Padu and his wife Padi were sleeping in the house in the night, next day morning Padi was found dead in the house and the accused was absconding from his house, therefore, father of the accused Langda (PW-1) gave merg intimation Ex.P-5 to Police Outpost: Chando, Police Station: Kusmi on 26-10-1995 that on 24-10-1995 (Tuesday) the accused and his wife (deceased) had gone to Village: Mutki to celebrate Kartik festival, next day both of them returned, they were drunk and next day morning his daughter-in-law was found dead in the house where Padu was not at his residence. This merg intimation was sent to Police Station: Kusmi, where F.I.R. (Ex.P-4) was registered. The A.S.I., Police Station: Kusmi left for the scene of occurrence and after giving notice to the Panchas (Ex.P-6) he prepared the Panchayatnama (Ex.P-7). The body was

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आदेश पत्रक

मामला क्रमांक G.A.1341/92 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sent to the Primary Health Centre, Balrampur, where Dr. S.P. Vaishya (PW-6) conducted post-mortem on the body of Padi and prepared the post-mortem report Ex.P-17. In police custody, accused Padu gave memorandum under Section 27 of the Indian Evidence Act (Ex.P-10) and based on that memorandum, weapon of offence club was taken into possession under Ex. P-11. Clothes of the deceased were taken into possession under Ex.P-12. Site plan Ex.P-13 was prepared.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, for trial.

The prosecution in order to establish charge against the accused examined 8 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him.

Learned Sessions Judge after hearing the arguments of Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Miss Sangeeta Mishra, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public prosecutor on behalf of the State/respondent.

The homicidal death of Padi is not in dispute.

Learned counsel for the appellant, at the outset, argued that there is no evidence on record that the accused assaulted the deceased with intention to cause her death and as has come in the evidence of father of the

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आदेश पत्रक

मामला क्रमांक G.A.1341/97 सन् ~~209~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused and father-in-law of the deceased that on the fateful day both of them returned from Village: Mutki after consuming liquor, it appears that in the night quarrel took place between the two and the accused assaulted the deceased with club which accidentally fell on the stomach as a result of which spleen & liver were ruptured. Therefore, offence against the accused/ appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, Mr. Deo supported the judgment of the trial Court.

As per the evidence of Langda (PW-1), father of the accused, it is established that the accused and the deceased returned from Village: Mutki after celebrating Kartik festival, both had consumed liquor, they were sleeping in the night, next day morning Padi was found dead and the accused absconded from the house. On 1-11-1995, the accused was arrested, he gave memorandum Ex.P-11 and in pursuance of that, weapon of offence club was recovered. As per the medical report, only contusions were found on the body of the deceased, however, her spleen & liver were found ruptured. Therefore, involvement of the accused in the crime in question is established. However, there is merit in the argument advanced by learned counsel for the appellant that there is nothing on record that the accused assaulted the deceased with intention to cause death. It appears that when both the accused and the deceased were drunk, some quarrel took place and on that, in a heat of passion, all of a sudden, the accused assaulted the deceased with club on the stomach as a result of which, liver & spleen were ruptured. Therefore, it can be inferred that the accused has knowledge that by assaulting with club his wife may receive injury, which may likely to cause death. Hence, knowledge can be inferred from the facts and circumstances of the case. But, the intention part has not been

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

established that the accused assaulted the deceased with intention to cause her death. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal is partly allowed. Conviction and sentence awarded to the accused/appellant under Section 302 of the I.P.C. are set aside, instead of, the accused/appellant is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for ten years. The accused is in custody since 1-11-1995, which has not been disputed by learned Additional Public Prosecutor, therefore, the accused has already undergone the sentence. It is, therefore, directed that the accused/appellant be set at liberty forthwith, if not required in any other case.

Certified copy, free of cost, of this judgment be provided to learned counsel for the appellant.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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14.2.06